



**BANGLADESH CENTER FOR
WORKERS SOLIDARITY**

From: Kalpona Akter
Bangladesh Centre for Workers Solidarity

To: Mr Didier Reynders and Mr Thierry Breton
European Commission

Dhaka, 18 July 2021

RE: Sustainable Corporate Governance legislation

Dear Commissioner Reynders, Dear Commissioner Breton,

As the leader of the Bangladesh Centre for Workers Solidarity and a former child worker, I was happy to hear that European Union is going to introduce binding rules for garment companies and other businesses. Multi stakeholder initiatives, codes of conduct and corporate social responsibility altogether have clearly failed to protect workers' rights and lives, and I have been calling for binding rules for many years. Only a law that addresses the root causes of violations and has accountability at its core will truly transform and protect people's lives.

Many people around you right now are wearing clothes that were cut, trimmed and sewn in Bangladesh because my tiny country is one of the largest garment exporters. Garments represent more than 80% of everything that the country exports. They are therefore the backbone of the Bangladeshi economy. About four million people, mostly women, work in over 4,000 garment factories across the country.

I started working in the garment industry when I was 12 years old. Later my 10-year-old brother joined with me. Sending us to work was the only way for the family to have food on the table. We had no idea about rights. I worked over 400 hours in a month, standing on my feet for 12 or 16 hours, often getting slapped by the supervisors – nothing unusual. A few years later I learned about my rights, and I started informing my coworkers. But as soon as I organized a union and applied for registration, I got fired. Later I got blacklisted throughout the industry. All those are still very common.

Knowing the garment industry very well, it is clear to me that even binding rules will not make all human rights violations stop. That is why I am writing now, in solidarity with millions of people who still work in factories in Bangladesh. I call on you to make

sure that the rules you are going to introduce are strong, but that they also give victims of corporate abuses clear and straightforward access to justice in European courts.

Every April, when the survivors of the Rana Plaza building collapse get together in memory of those who had died in the rubble, I am reminded what happens if workers' safety and other rights are left to voluntary commitments, and what it takes for those injured and for victims' families to access any kind of remedy. I was reminded of this last week, too, when over 50 people died because they could not escape from the fire that broke out in a food and drink factory in Bangladesh. As in many other cases, the door was locked and there was no safe way out.

Rana Plaza collapse, the biggest disaster in the history of garment industry, took place in my home country on 23 April 2013. Many workers did not want to enter the Rana Plaza building that day because of large cracks in the walls. But they worked for poverty wages, just as workers in Bangladesh do today. They could not afford to miss the day's pay, as the factory owners threatened. More than 1100 people died in that deathtrap building and thousands were injured.

A few days later I was picking through what was left of the building. I was hoping to find labels from big brands like H&M or Nike, Benetton or Mango. Risking our lives like that was the only way to find out which companies sourced from the garment factories in the Rana Plaza building.

Those labels were the only hope for the survivors and victim's families to at least get some compensation. It took us weeks, but we found labels, tags and order sheets from more than 29 brands. Many of them had nice sounding codes of conduct. Those words made no difference for the workers who died and for the children who were left behind.

That traumatic digging through the rubble was only the beginning. It took two years of campaigning, public naming and shaming, and global mobilization, before brands paid into the Rana Plaza Arrangement compensation fund. Some never did. And to this day not a single legal case in Bangladesh against the owners and others implicated in the disaster has delivered justice.

Even the Bangladesh Accord on Fire and Building Safety that was signed after the Rana Plaza disaster and has made factories safer for over two million workers is now in danger. Brands are refusing to extend it. They are using the new rules that you are working on at the European Commission as an excuse. But the Accord itself is a perfect example of how companies can ensure respect for human rights in practice even after those rules come into force years from now. We continue to fight for the Accord and appreciate the public support expressed by some European politicians.

Many other companies are not committed to any binding agreement in the first place. Only legislation can make them take human rights seriously, not only in their

headquarters but wherever their goods are made. That can be on factory floors as well as in people's homes.

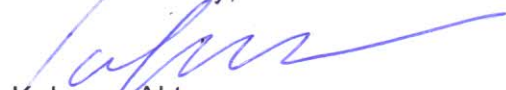
Please remember the Rana Plaza victims and also do not forget about us who had to dig through the rubble of a collapsed factory to find out which brands should be called to account. The rules you are going to introduce should include mandatory value chain transparency. Activists like myself, politicians like yourself, the workers, consumers, and everyone else should be able to easily trace a company's production sites, or a T-shirt's origin and its journey through the value chain.

New rules will not make a difference for those who died in many other unsafe factories around the world. But if you make sure that every company has to identify, prevent and mitigate human right risks in its value chain, including the company's own purchasing practices, then you can help save and improve many millions of lives in the future.

I think about my own experience in a sweatshop and all the personal stories that I know through my current work, and I conclude: companies must be held liable for their due diligence failures, and grieving families, injured survivors and other victims of corporate abuse must be able to access courts and effective remedy.

I thank you for your consideration of this point of view and am available for any further information.

Yours sincerely,



Kalpona Akter
Executive Director
BCWS

Saeeda Khatoon
Chairperson,
Ali Enterprise Factory Fire Affectees' Association

Mr Didier Reynders
Commissioner for Justice

Mr Thierry Breton
Commissioner for Internal Market
European Commission

Karachi, 6th July 2021

RE: Proposed Sustainable Corporate Governance Directive

Dear Commissioners,

I am writing to you concerning the Sustainable Corporate Governance directive that you are developing.

I write to you on behalf of the families affected by the 2012 Ali Enterprises garment factory fire in Karachi, Pakistan. Our association, representing the families of the deceased and the survivors, respectfully calls on you to ensure that the law will include access to justice for victims.

The Ali Enterprises factory was in its fifth year producing jeans for its main client, the German brand, KiK, *Kunde ist König* (Customer is King), when the fire broke out. 258 of our loved ones perished trying to escape, many of them teenagers. Of the hundreds of survivors many were also severely injured and left unable to work. Most of the deceased and survivors were breadwinners for their families, thus leaving over 200 families destitute, unable to work or cover the costs associated with their livelihood, their physical and their psychological suffering. In the factory there were no fire safety measures: no functioning emergency fire exists; no smoke or fire alarms; and no fire extinguishers. If there had been, the disaster would have been prevented.

Two weeks before the Ali Enterprise fire occurred the factory was also certified by a 'social audit' by an Italian auditing company, RINA Services.

In Pakistan, we brought judicial cases against both the Sindh State government and the factory owners for their dereliction of duty and their negligence, as we hold them responsible. Those cases brought only meagre financial relief for the victims' families.

We also tried to hold KiK and RINA legally responsible for the fire. Immediately after the fire KiK donated \$1 million in charity to the victims. In March 2015 we filed a complaint against KiK in a German court in order to seek additional compensation for the victims'



families, as the charity amount was woefully insufficient to deal with the degree of damage and suffering caused to that many people. In January 2019 the case was dismissed by the German court for not meeting the time requirement and was not allowed to appeal. A criminal investigation into RINA Services in Italy was also discontinued.

In September 2016, KiK finally agreed to an additional charity compensation of circa \$5 million to the victims, the result of an intense and tiring international campaign.

In our struggle for justice we have sought some relief in the idea that the death of our loved ones - martyrs - has not been without meaning. We have worked to make sure wrongs are corrected for others not only in Pakistan but all over. Our 'case' was often used as justification for the German supply chain law that was recently passed. **However, unlike stronger first drafts of the law, the law that was passed does not provide new legal rights of compensation to victims.** After almost a decade of struggle this development is **incredibly hurtful and disappointing**, even more so because we have been told **international law supports this**.

We have been told that you have the power to fix this situation. If not now, then when? In your countries the right to justice for victims is taken for granted. Please deliver us this courtesy as your companies extract profits from the factories where our families work under very cheap – that means unhealthy and dangerous – conditions.

May God bless you with the open heart and courage to improve this situation for the ones who are most harmed and vulnerable.

May Peace be Upon You,



Saeeda Khatoon

Chairperson

Ali Enterprise Factory Fire Affecttees Association (AEFFAA)



بحرمت چناب و ڀرر ڀندر س

ڪميشن برائے انصاف

بحرمت چناب تھار یر یر یر

ڪميشن برائے انٽرل مارڪيٽ

يورپين ڪميشن

ڪراچي، بروز منگل ۶ جولائي، ۲۰۲۱

معزز ڪشفر صاحبان!

میں آپ کو سسٽم انٽرل مارڪيٽ گورننس هدايت نامہ کے متعلق لکھ رہی ہوں جس پر آپ لوگ کام کر رہے ہیں۔

میں آپ سے ان تمام لواحقين کی طرف سے مخاطب ہوں جنہوں نے ۲۰۱۲ میں سامعہ بلدیہ فاؤن ڪراچی میں علی انٽر پرائز میں لگنے والی آگ کی وجہ سے اپنے خاندان کے لوگوں کو کھو یا۔ ہماری ایسوی ایشن، جو تمام لواحقين کی نمائندہ ہے، آپ سے اس بات کی درخواست کرتی ہے کہ کئی قانون سازی تمام متاثرین کے لئے انصاف کو یقینی بنائے۔

جب یہ سامعہ ہوا اس وقت تک علی انٽر پرائز پاچے برسوں سے اپنے مرکزی کلائنٹ جرمن برانڈ KIK کے لئے جیتز بنا رہی تھی۔ ہمارے دو سواٹھاون (۲۵۸) پیارے ہم سے جدا ہو گئے، جن میں سے ایک بڑی تعداد کو عمر جوانوں کی تھی۔ سینکڑوں لوگ زخمی اور ہمیشہ کے لئے معذور ہو گئے۔ زیادہ تر لوگ اپنے گھر کے واحد کنبیل تھے اور ان کی انسانی موت کی وجہ سے سینکڑوں خاندانوں کے ہزاروں لوگ بے یار و مددگار ہو گئے اور جسمانی اور ذہنی قرب کا شکار ہوئے۔

فیکٹری میں کسی بھی قسم کے حادثے سے نمٹنے کے لئے کوئی بھی ہیلتھ اور سفٹی کے انتظامات نہیں تھے۔ کوئی ایمرجنسی دروازہ نہیں تھا، کوئی الارم نہیں تھا اور نہ ہی آگ بجھانے کا کوئی انتظام تھا۔ اگر یہ سب انتظامات ہوتے تو جانی نقصان یقیناً اس قدر نہ ہوتا۔

حیرت انگیز طور پر آگ لگنے سے صرف دو چھتے پہلے ایک ٹالین آؤ پیٹک کمپنی، RINA نے فیکٹری کا ویشل آؤٹ بھی کیا تھا۔

ہم نے پاکستان میں سندھ حکومت اور فیکٹری کے مالکان کے خلاف عدالتی کارروائی کا آغاز بھی کیا جس کا کوئی خاطر خواہ نتیجہ نہیں نکلا۔

ہم نے جرمن برانڈ KIK اور ٹالین آؤ پیٹک کمپنی RINA کے خلاف بھی عدالتی کارروائی کی۔ سامنے کے کچھ عرصہ بعد KIK نے ایک ملین ڈالر کی خیراتی رقم لواحقين کو دی۔

مارچ ۲۰۱۵ میں ہم نے جرمن عدالت میں KIK کے خلاف درخواست دی تاکہ لواحقين کو ان کا حق مل سکے کیونکہ خیراتی رقم کو ان کے نقصان اور ذہنی قرب کے لئے انتہائی حقیر تھی۔ لیکن جنوری ۲۰۱۹ میں جرمن کورٹ نے وقت زیادہ گزر جانے کی بنیاد پر کیس خارج کر دیا۔ اگلی میں RINA کے خلاف مجرمز کیس بھی خارج کر دیا گیا۔

اس کے کچھ برس قبل، ۲۰۱۶ میں ہماری انتھک محنت اور تین اقوامی جدوجہد کے نتیجے میں KIK نے تقریباً پانچ ملین ڈالر کی انسانی رقم لواحقين کے لئے دینے پر رضامندی ظاہر کر دی تھی۔

ہماری انصاف کے لئے اس طویل جدوجہد نے ہمیں یہ احساس دلایا کہ ہمارے شہیدوں کا پورا انگیاں نہیں جانے گا۔ ہماری ساری تو جاس بات پر ہے کہ مجموعی طور پر مزدوروں کے لئے حالات بہتر بنائے جائیں نہ صرف پاکستان میں بلکہ پوری دنیا میں۔ حال ہی میں پاس ہونے والے جرمن سپلائی چین لاء کے بحث و مباحثہ کے دوران اکثر ہمارے سامنے کوشاں طور پر پیش کیا گیا۔ لیکن یہ فوسناک بات ہے کہ قانون کے ابتدائی ڈرافٹ بہت طاقتور ہونے کے باوجود جو قانون بالاخر پاس کیا گیا وہ لواحقين کو معاوضہ کا کوئی نیا قانونی حق نہیں دیتا۔ سالہا سال کی طویل اور ردناک جدوجہد کے بعد یہ نتیجہ بہت مایوس کن اور تکلیف دہ ہے۔ ہم یہ جانتے ہیں کہ ریپٹو ای تو اٹھیں اس کے برعکس ہیں۔

ہمیں معلوم ہے کہ آپ صاحبان کے پاس اس معاملے پر نظر ثانی کرنے اور ترمیم کرنے کا اختیار ہے۔ اگر آپ ابھی ایسا نہیں کریں گے تو کب کریں گے؟

آپ کے ہر مالک میں لواحقين کے لئے حق کو نظر انداز کیا گیا ہے۔ آپ کا یہ فرض ہے کہ آپ ہماری آواز میں کیونکہ آپ کے مالک کی کچیاں ان فیکٹریوں سے منافع کماتی ہیں جہاں ہمارے بچے اور بزرگ خطرناک اور مضر صحت حالات میں کام کرتے ہیں۔

میری دعا ہے کہ خدا آپ کے دلوں میں رحم ڈالے اور آپ ہماری فریادیں سکیں۔

دعا گو

سعیدہ خانوون

جیتز پرسن

علی انٽر پرائز فیکٹری قاعز متاثرین ایسوی ایشن



Social audit liability

HARD LAW STRATEGIES TO REDRESS WEAK SOCIAL ASSURANCES

Executive summary

The worldwide impact of the COVID-19 pandemic has been catastrophic for workers and communities. We now have a pivotal opportunity to rebalance deep inequalities of power and wealth in global supply chains and forge a path towards a [just recovery](#). This demands transformative action by states and companies to put human rights firmly at the heart of business.

Crucially, this requires robust corporate human rights due diligence¹ and effective access to remedy for victims of corporate abuse. The inadequate model of [social audits](#)² that companies have increasingly deployed to manage human rights issues in their supply chains is not a substitute for human rights due diligence. Reasons include that social audits do not ensure [meaningful](#) company engagement with rights-holders—the bedrock of human rights due diligence—and the [well-documented](#) failure of social audits to detect human rights abuse.

The social audit industry has rightly come under increasing scrutiny for its role in sustaining tolerance of abuse in company supply chains. It is time the social audit industry is held to account for false or negligent claims which hide the truth of abuse against workers. This report outlines legal strategies to seek accountability and remedy when a social audit firm harms human rights, and highlights that new laws and regulations must not equate social audits with human rights due diligence, or see them as a plausible substitute.

¹ Under the United Nations [Guiding Principles on Business and Human Rights](#) (UNGPs) at Principle 17, human rights due diligence is the process by which companies identify, prevent, mitigate and account for their adverse human rights impacts. According to the UNGPs, human rights due diligence should cover adverse impacts that a business “may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships”. Principle 18 calls on companies to undertake meaningful consultation with potentially affected stakeholders, at regular intervals. Under Principle 22, companies should remediate the adverse impacts they cause or contribute to.

² For the purpose of this report, social audits are a voluntary process carried out to assess and verify a company’s compliance with specified labour and/or environmental standards. This report is concerned with third-party social audits carried out by companies (“social audit firms”).

Dangerous factory conditions and widespread abuse have been exposed in numerous workplaces with compliance statements from social audit firms. Cases include:

- | The repeated failure of social audit firms to report on forced labour risks at rubber glove factories in Malaysia, subsequently exposed by [investigative journalists](#) in 2018 and, at another factory, by [state labour inspections](#) in 2020.
- | The 2013 collapse of the [Rana Plaza building](#) in Bangladesh, which killed 1,132 people and injured thousands more; multiple social audit firms failed to report on structural defects.
- | The 2012 disaster at [Ali Enterprises factory](#) in Pakistan, which was declared safe by a social audit firm just weeks before a factory fire killed over 250 workers trapped behind barred windows in a building with only one useable fire exit.

“ While RINA certified the factory as safe, in reality it was a death trap that cost the life of my son and over 250 others,”

[Saeeda Khatoon](#), Chairperson of the Ali Enterprises Factory Fire Affectees Association

Bringing legal claims against social audit firms is, so far, a barely-tested strategy to create legal accountability for the industry. To date, only two legal claims have been brought:

- | A [criminal complaint](#) filed in 2014 in Italy against the Italian firm, RINA,³ that issued social certification to Ali Enterprises factory in 2012; and
- | A tort [lawsuit](#) filed in 2015 in Ontario, Canada, against a French firm, Bureau Veritas, for its alleged negligent audits of factories in the Rana Plaza building.

Neither claim resulted in a finding of liability. However, social auditors do not operate in a legal vacuum. This report outlines innovative approaches for [social auditor liability](#), offering an avenue for victims to access legal remedy. As examples, French law appears to provide a favourable strategy in tort for those affected to sue a social audit firm under the social audit contract. German law offers a way to argue that a social auditor has a delegated legal duty to safeguard workers. Certain common law tort theories provide a basis for establishing a social auditor's duty of care to affected workers, from which negligence liability can follow. The United States (US) Trafficking Victims Protection Reauthorization Act is a potential route for victims of forced labour to sue a social auditor for benefitting from labour exploitation.

Another possible area of litigation is a consumer claim against a certification scheme. A [lawsuit](#) in Washington State in the US against Rainforest Alliance indicates the viability of legal claims, although such claims would not result in remedy for affected workers and communities.

3 RINA's response to these allegations is accessible [here](#).

Nonetheless, efforts to secure the legal accountability of social audit firms face limitations in existing legal frameworks and systemic [barriers to access remedy](#). These include:

- | the dangers and difficulties those affected face when collecting evidence;
- | difficulties in establishing the causal link between the audit and harm suffered; and
- | sub-contracted audits and challenges specific to transnational litigation.

Addressing these challenges requires contractual and legal reform, in addition to safeguards against reprisals for victims taking legal action. Negotiations around [mandatory Human Rights and Environmental Due Diligence](#) (mHREDD) laws and a [Legally Binding Treaty](#) on business and human rights offer vital opportunities to ensure victims of abuse have effective access to legal remedy, including for claims against social audit firms and where claims have a transnational component.

States should establish robust civil and criminal corporate liability regimes and reject social audits and certifications as proof of human rights due diligence. In turn, social audit firms, in their capacity as companies, must be subject to mHREDD laws and corresponding liability regimes.

At the same time, securing social auditor liability should not deflect from efforts to hold brands and suppliers accountable for human rights abuses. Companies should not solely rely on social audits and certifications. Instead, they should adopt a transformative approach to human rights due diligence which goes beyond social auditing.

Recommendations

- | **Lawyers and legal advocates** are encouraged to build on our research and support efforts to hold social audit firms to account for human rights harm.
- | **Governments** should address the barriers to justice which sustain corporate impunity. At a minimum, they should enact mHREDD legislation and robust civil and criminal liability regimes, including a reversed burden of proof for civil claims, to ensure victims' access to legal remedy. Governments should ensure all companies, including social audit firms, are subject to these laws and held liable for human rights abuse. Governments should stipulate in mHREDD legislation that social audits and certifications do not equate to human rights due diligence. Finally, governments must ensure those challenging corporate abuse are protected against reprisals.
- | **Companies including social audit firms** should respect human rights in accordance with the United Nations Guiding Principles on Business and Human Rights (UNGPs), ensuring effective human rights due diligence through the meaningful engagement of rights-holders. Companies should protect those reporting on corporate abuse, and taking legal action, against reprisals. Companies should introduce contractual reform to grant affected rights-holders third-party rights and remove confidentiality restrictions to disclosing audit reports and contracts.